

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-5, 7-13, 16-21, and 23-35 are pending, with Claims 26-35 withdrawn from consideration.

**Amendment to the Claims**

Claims 1-5, 7-13, 16-21, and 23-25 have been examined, with no claims being allowed.

Claim 1 has been amended to clarify that the nonblocking agent is not in contact with the facing layer or adhesive when in an unwound position. Support for this limitation is provided, for example, at page 30, lines 7-24.

No new matter has been added by this Amendment. No additional fee is required because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

**Claim Rejection - 35 U.S.C. §112**

The rejection of Claim 1 under 35 U.S.C. §112, second paragraph, as being indefinite is respectfully traversed. Applicants have amended Claim 1 to recite the nonblocking agent is not in contact with the facing layer or the adhesive when unwound. Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

**Claim Rejections - 35 U.S.C. §103(a)****A. Mleziva, Morman, Schmidt and Gage**

The rejection of Claims 1-5, 6-13, 16-21, and 23-24 under 35 U.S.C. §103(a) as being unpatentable over Mleziva et al. (U.S. Patent No. 6,057,024, hereinafter "Mleziva") in view of Morman (U.S. Patent No. 4,657,802) in further view of Schmidt, Jr. et al. (U.S. Patent No. 4,460,728,

hereinafter "Schmidt") and Gage (U.S. Patent No. 5,459,186) is respectfully traversed.

**Mleziva** is cited as the primary obviousness reference by the Examiner for disclosing a composite elastic material having continuous ribbon shaped filaments bonded to a gatherable layer. On pages 3 and 4 of the Office Action, the Examiner states that Mleziva is lacking five elements of Applicants' claims, including: 1) open time for the adhesive, 2) polypropylene adhesive, 3) meltblown nonblocking layer, 4) peel strength and 5) layer weights. More particularly, Mleziva does not teach or suggest a meltblown nonblocking agent applied to the elastic layer, the adhesive open time of between about 0.2 seconds and 1 minute, or the meltblown nonblocking agent deposited in an amount of between about 0.2 and 2.0 gsm, as recited in Applicants' independent Claim 1.

**Morman** fails to overcome the deficiencies of Mleziva to arrive at Applicants' claimed invention. The Examiner cites Morman for allegedly disclosing a polyolefin antiblocking layer of varying thicknesses. Morman actually teaches application of a *second facing layer* to the laminate or the use of a *removable facing layer*.

In order to **avoid adhesion** of the exposed side of the tacky fibrous nonwoven elastic web upon **rolling-up** of the composite nonwoven elastic web it is preferred for a **second fibrous nonwoven gatherable web** to be applied to the exposed surface of the fibrous nonwoven elastic web prior to the gathering step. Alternatively, **butcher paper** may be applied, either before or after gathering of the gatherable web, to the exposed tacky surface of the tacky fibrous nonwoven elastic web and **later removed** prior to utilization of the composite nonwoven elastic web. (column 9, lines 34-45, emphasis added).

The above does not teach or suggest Applicants' single sided elastic laminate having a nonblocking agent, which allows *elimination of the second facing layer*. Applicants' invention also obviates the need for applying butcher paper to the laminate. Put another way, Applicants' invention is a lighter, more cost effective and less stiff laminate that eliminates the need for a second facing layer to prevent roll blocking.

The fibrous nonwoven web of Morman, cited by the Examiner as having a basis weight of 21 grams per square meter (gsm), is not equivalent to

Applicants' nonblocking agent. In contrast, Applicants' nonblocking agent is applied in a much smaller amount of between about 0.2 and 2.0 gsm. One skilled in the art would not be motivated by the high basis weight of Morman to modify Mleziva to arrive at Applicants' nonblocking agent which can be so thin that no readily visible web is formed (*see*, page 20, lines 25-27).

Contrary to the Examiner's assertion that Morman discloses varying layer thicknesses, Morman actually teaches a stacking configuration where **additional** layers of nonwovens are bonded to the laminate (*see*, column 27, lines 21-25). Adding **additional** layers **teaches away** from Applicants' single sided laminate, which has increased flexibility and reduced overall basis weight. Adding additional layers of a relatively thick material to a laminate that is already relatively thick cannot produce a thinner, more flexible laminate. Consequently, neither Mleziva nor Morman provide any suggestion or motivation to one skilled in the art to modify and/or combine these references to achieve a single sided elastic laminate having a nonblocking agent, as recited in Applicants' independent Claim 1.

**Gage** further fails to overcome the deficiencies of Mleziva and Morman. The Examiner cites the Gage reference for its disclosure of peel strength and composition. However, the Gage reference is directed to a peelable thermoplastic film, which is not analogous to Applicants' claimed invention.

Applicants' claimed invention is a laminate. In contrast, Gage is directed to a film. Applicants' claimed laminate includes a layer in an amount of between about 0.2 and 2.0 gsm that comprises a meltblown nonblocking agent. More particularly, the meltblown nonblocking agent is applied to an elastic layer and is not in contact with either a facing layer or an adhesive. In contrast, the Gage film includes a "slip and anti-block agent" **blended into the film composition**, in an amount of 10-20% of the film composition, prior to extruding the film.

The nonblocking agent recited in Applicants' Claim 1 is not analogous to Gage's slip and anti-block agent. Not only are the compositions of these nonblocking and anti-block agents completely different, with Applicants' meltblown nonblocking agents including polypropylene, amorphous polyalpha olefins, and elastomeric polymers without tackifiers, whereas Gage's antiblock agents are

erucamide and silica; the physical application of these nonblocking and anti-block agents serve completely different purposes.

Nonblocking agents, as recited in Applicants' claimed invention, are effective when applied to the surface of a layer for preventing sticking when the layer or laminate is wound on a roll. In contrast, blending a slip and antiblock agent into a film composition effectively renders the *entire film* capable of being removed from a substrate to which the film has been heat sealed.

Regarding peel strength, the lowest value disclosed by Gage is 336 gm/½ inch. In contrast, Applicants' claimed invention recites a maximum peel strength of less than about 200 grams. Applicants' invention strives for a low peel strength to prevent roll blocking when the laminate is being processed. Gage, on the other hand, is directed to a film in which "the elastic properties of the film should be sufficient to **resist the shear force** created when the substrate is **flexed or wound without separating from the substrate**" (column 1, lines 47-50, emphasis added). Consequently, Gage requires greater peel strength to function properly for packaging purposes. Lowering the lowest peel strength of Gage by more than 40% to arrive at Applicants' highest peel strength would render the Gage film unfit for its intended purpose. Thus, Gage fails to provide any suggestion or motivation to one skilled in the art to modify and/or combine the teachings therein with the teachings of Mleziva and Morman to achieve Applicants' claimed invention.

**Schmidt** also fails to overcome the deficiencies of Mleziva, Morman, and Gage. More particularly, neither Mleziva, Morman, Gage, nor Schmidt, alone or in any combination, disclose or suggest a *single sided* elastic laminate that includes a layer comprising a *meltblown nonblocking agent* applied to an elastic layer in an amount of between about *0.2 and 2.0 gsm*, particularly whereby the layer comprising the meltblown nonblocking agent is *not in contact with a facing layer or an adhesive* when the laminate is in an unwound configuration. There is no suggestion or motivation in any of these references to modify and/or combine any of these references to achieve Applicants' claimed invention.

For at least the reasons given above, Applicants respectfully submit that the teachings of Mleziva, Morman, Schmidt and Gage fail to disclose or suggest

Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**B. Mleziva, Morman, Schmidt, Gage and Shawver**

The rejection of Claim 25 under 35 U.S.C. §103(a) as being unpatentable over Mleziva in view of Morman, Schmidt, and Gage as applied to Claims 1-5, 7-13, 16-18, and 24 above, and in further view of Shawver et al. (U.S. Patent No. 6,909,028, hereinafter "Shawver") is respectfully traversed.

Claim 25 depends from independent Claim 1 and is patentable for at least the same reasons discussed above. The Examiner cites Shawver for disclosing necking. Despite any necking disclosure, Shawver still fails to overcome the deficiencies of Mleziva, Morman, Schmidt, and Gage in achieving Applicants' claimed invention.

For at least the reasons given above, Applicants respectfully submit that the teachings of Mleziva, Morman, Schmidt, Gage, and Shawver fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**Double Patenting**

**A. Application Serial No. 11/011,439**

The rejection of Claims 1-5, 7-13, 16-21 and 23-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 9 and 12 of co-pending U.S. Patent Application No. 11/011,439 is respectfully traversed.

Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more co-pending applications, MPEP §804(I)(B) states that "[i]f a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the Examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer," and "[i]f 'provisional' ODP rejections in two applications are the only rejections

remaining in those applications, the Examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.”

Applicants believe that the current amendments to the independent claims now place all claims in condition for allowance. Since this application is the earlier-filed application (31 December 2003 versus 14 December 2004), Applicants respectfully request the Examiner to withdraw this double patenting rejection and to permit this earlier-filed application to issue as a patent without a terminal disclaimer.

**B. Application Serial No. 11/070,307**


The rejection of Claims 1-5, 7-13, 16-21 and 23-25 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-20 of co-pending U.S. Patent Application No. 11/070,307 is respectfully traversed.

As explained above, Applicants believe that the current amendments of the independent claims in this case place all claims in condition for allowance. Since this application is the earlier-filed application (31 December 2003 versus 01 March 2005), Applicants respectfully request the Examiner to withdraw this double patenting rejection and to permit this earlier-filed application to issue as a patent without a terminal disclaimer.

**Conclusion**

Applicants believe that the claims, as now presented, are in condition for allowance. Allowance of this application is respectfully requested. If the Examiner detects any unresolved issues, then Applicants' attorney respectfully requests a telephone call from the Examiner, and a telephone interview.

Respectfully submitted,



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